

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)

Implementation of the)
Pay Telephone Reclassification)
and Compensation Provisions of the)
Telecommunications Act of 1996)

CC Docket No. 96-128

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

COMMENTS

American Alpha Dispatch Services, Inc., Absolute Best Monitoring, Inc., Affordable Message Center, Inc., Procommunications, Inc., National Dispatch Center, Inc., Abacus, Inc., United Cellular Paging, Inc., Dispatch America, Inc., Alphanet, Inc. and All Office Support, Inc. (hereinafter "The Dispatching Parties"), through counsel and pursuant to the Commission's Public Notices of December 31, 1997, hereby respectfully submits their Comments in support of the Petition for Limited Waiver filed by AirTouch Paging¹ ("AirTouch") and the International Telecard Association² ("ITA") in the above-captioned proceeding.

In essence, each Petitioner requests similar relief from the Common Carrier Bureau's ill-advised "Coding Digit Waiver Order".³ The Bureau's action granted a waiver, until March 9, 1998, to those local-exchange carriers ("LECS") and payphone service providers

¹DA 97-2735.

²DA 97-2734.

³*Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-128, Order, DA 97-2162 (Com.Car.Bur., Oct. 7, 1997).

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("PSPs") that cannot provide payphone-specific coding digits as required by the Commission's *Payphone Orders*.⁴

The impact of the Coding Digit Waiver Order on AirTouch and ITA is virtually the same, each Petitioner is now faced with the potential of charges for an unlimited number of calls from pay telephones without the ability to block the calls. Further, without the ability to track the calls, the Petitioner will be unable to assess the charges to the proper customers, meaning that the Petitioners will have to absorb the charges.

The Dispatching Parties support the Petition for Reconsideration and Petition For Limited Waiver. The Dispatching Parties are impacted in the same manner as the Petitioners, and there is no valid reason for the Bureau's action, especially on its own motion.

Unfortunately, the Dispatching Parties and the Petitioners are caught in the cross-fire between two groups, the PSPs (which include LECs) and inter-exchange carriers ("IXCs"). PSPs want to be properly compensated for calls made on their telephones. The Dispatching Parties have said from the beginning that it does not object to that objective. IXCs, while being relieved of their standard pay telephone payment amount, properly do not want to absorb any additional costs. At the same time, the Commission would like 800/888 calls to be no cost to the caller. Therefore, the Commission must determine what compensation the PSPs should receive, and from what party.

⁴*Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, Report and Order*, 11 FCC Rcd 20,541 (1996); Order on Reconsideration, 11 FCC Rcd 21,333 (1996).

The Commission solution is to permit the "marketplace" to decide a proper compensation for PSPs, and to set a default rate in the absence of a negotiated rate. Herein lies two errors by the Commission. First, the Commission has improperly found that there is some "marketplace" for pay telephones which would give PSPs and IXC's some reason to negotiate a toll-free compensation rate. This analysis is flawed. Since, IXC's merely pass along the charge, with the Commission's blessing,⁵ there is no incentive whatsoever for IXC to negotiate rates with PSPs. There are only two "marketplaces" which exist with regard to pay telephones: (1) negotiations by competing PSPs with the property owner for access to the premises; and (2) competition for a caller between competing PSPs on the same street corner. Neither of these "marketplaces" impact 800/888 numbers, because in each case (under the present system) the call is free to the caller, satisfying both the caller and the property owner. Thus, to find that there is any "marketplace" in this case is simply wrong.

Second, the Commission is embroiled in this controversy whether its cost analysis should be "top-down" or "bottom-up", with competing parties arguing each side. Whether the analysis is "top-down", "bottom-up" or "sideways-out", the Commission will never reach a result satisfactory to either side. More importantly, however, the analysis cannot be properly performed as the pay telephone market is not competitive at this time. Therefore, it is impossible to determine cost accurately because LECs who are PSPs have no incentive to keep costs reasonable, and independent PSPs merely fall lock-step into whatever the LEC/PSP is charging at the nearest pay telephone. This situation should change as location

⁵Memorandum Opinion and Order, CC Docket No. 96-128, DA 97-2565, released December 5, 1997 at para. 8 (hereinafter "MCI Order").

competition takes hold and PSPs begin facing the challenge of a wireless substitute for their service, but that "marketplace" does not yet exist. Still, when this "marketplace" does develop, it will still not be a marketplace while 800/888 numbers are no cost to the pay telephone caller. Thus, the Commission's effort is, at best, a guess, but in any event will always be higher than the actual costs if the marketplace was truly competitive.

The next problem along the compensation trail is the IXC. As discussed previously, the IXC has the ability and authority to pass along these additional charges to customers, and therefore has no incentive to negotiate rates. The Commission, however, believed that the default rate would somehow "... compensate for any unequal bargaining power arising out of the inability of carriers to block payphone calls..."⁶ However, there is no unequal bargaining power, there is merely an absence of a need to bargain. And a default rate cannot serve as any kind of equalization when the default rate is just as much, and in many cases more, than a regular pay telephone call.

Further, when MCI requested a stay of its obligation to pay these charges during the reconsideration period, the Common Carrier Bureau refused, because it did not want MCI to "... have its cake (in the form of a stay of interim per-call compensation) and eat it too (in the form of enjoying the concomitant reductions in access charges)..." were the Commission to grant the stay.⁷ However, IXCs are "having their cake" anyway, as no IXC (to the Dispatching Parties' knowledge) have lowered their rates to reflect the access charge

⁶Memorandum Opinion and Order, CC Docket No. 96-128, DA 97-2622, released December 17, 1997 at para. 6 (hereinafter "PCIA Order").

⁷MCI Order at footnote 28.

reduction and substituted that charge with a per-call charge. Rather, IXC's are merely passing on the per-call charge and marking up the charge to \$.35. Thus, IXC's are "double-dipping" despite the Commission's action.

When PCIA requested a stay during the pendency of the various reconsiderations, the Common Carrier Bureau stated that PCIA had "... submitted no concrete, credible evidence to support [its] allegation...." that PCIA members "... could lose customers and be forced out of business due to compensation obligations."⁸ PCIA quite properly was requesting relief before an incredibly obvious harm occurred.

Now, the "harm" has occurred. Holders of 800/888 numbers should now have received their first IXC bills under the new rules. In the case of one of the Dispatching Parties, American Alpha, there was an increase of 14% in its IXC bill, due to pay telephone charges. However, there was no reduction in the standard charge resulting from the elimination of the access charge.

Some PSPs have attempted to categorize 800/888 number holders as now complaining because they no longer have a "free ride". However, 800/888 number holders have never had a "free ride". They have always had to pay the standard access fee for PSPs. Now, however, 800/888 number holders are being asked to pay an additional fee, not substitute fee. Further, while the previous fee was standard and predictable, the current charge could be unlimited.

As pointed out in the Dispatching Parties Petition for Reconsideration, there is now an incentive for 800/888 calls to be placed from a pay telephone for no reason other than

⁸PCIA Order at para. 11.

to generate revenue for PSP. While based upon its PCIA Order the Common Carrier Bureau might believe that this harm was merely "potential", in fact the harm is occurring. As discussed more fully in the Petition for Reconsideration, the Dispatching Parties have seen a significant increase in the number of "hang-up" calls since the rule change. For each of these calls from a pay telephone, 800/888 number holders are paying \$.35 for calls which never would have been made but for the ability of the PSP to make money from the hang-up call. This harm can't merely be spirited away by blocking pay telephone calls (when that is possible), because many 800/888 number holders must be able to receive pay telephone calls, are not opposed to paying on a per-call basis (if the access charge is dropped from the number holder's bill) but don't want to be defrauded and pay for non-legitimate calls (or even accidental wrong numbers).

The Bureau's response to PCIA's raising the issue of this new cost was that "... PCIA members can pass on [this cost] to their own customers, just as they pass on other costs."⁹ However, without coding digits, this "pass along" is not possible. Thus, the only means by which the Dispatching Parties could choose to block calls or pass along charges is not available. Therefore, relief as requested by the Petitioners is important, and ought to be extended to all number holders. Further, PCIA members and the Dispatching Parties cannot merely "pass along" fraudulent "hang-up" calls.

⁹PCIA Order at para. 11.

WHEREFORE, the premises considered, it is respectfully requested that the Commission GRANT the relief requested by the International Telecard Association and AirTouch Paging and extend such relief to all 800/888 number holders consistent with the views expressed herein.

Respectfully submitted,

AMERICAN ALPHA DISPATCH SERVICES, INC.
ABSOLUTE BEST MONITORING, INC.
AFFORDABLE MESSAGE CENTER, INC.
PROCOMMUNICATIONS, INC.
NATIONAL DISPATCH CENTER, INC.
ABACUS, INC.
UNITED CELLULAR PAGING, INC.
DISPATCH AMERICA, INC.
ALPHANET, INC.
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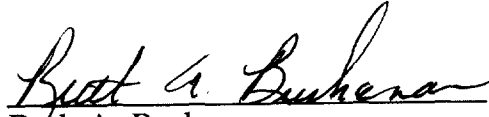
Date: January 15, 1998

CERTIFICATE OF SERVICE

I, Ruth A. Buchanan, a secretary in the law office of Meyer, Faller, Weisman and Rosenberg, P.C. hereby certify that I have on this 15th day of January, 1998 sent via first class mail, postage prepaid, a copy of the foregoing Comments to the following:

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